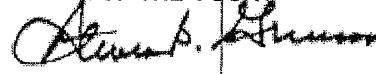


EXHIBIT “A”

EXHIBIT “A”

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Steven D. Grierson
CLERK OF THE COURT



1 BRADLEY J. BELLISARIO, ESQ.
 2 Nevada Bar No. 13452
 3 BELLISARIO LAW P.C.
 4 7495 W. Azure Dr., Ste. 258
 5 Las Vegas, NV 89130
 6 T: (702) 936-4784
 7 F: (702) 936-4801
 8 E: BradB@BellisarioLaw.com
Attorney for Plaintiff
David Walton

CASE NO: A-20-818068-C
 Department 2

DISTRICT COURT

CLARK COUNTY, NEVADA

10 DAVID WALTON,

11 Plaintiff,

Case No.:

Dept No.:

12 vs.

COMPLAINT

13 SMITH'S FOOD & DRUG CENTERS, INC.
 14 A/K/A KROGER AND DOES I-V, AND ROE
 15 CORPORATIONS, I-V, INCLUSIVE,

16 Defendants

17 David Walton ("Plaintiff"), by and through his attorney, Bradley Bellisario, Esq., of
 18 Bellisario Law P.C., hereby alleges against Smith's Food & Drug Centers, Inc.; ROE Corporations
 19 I-V, and DOES I-V (each of the foregoing identified defendants are hereinafter referred to as
 20 "Defendants") as follows:

21 L. PARTIES AND JURISDICTION

23 1. That Plaintiff DAVID WALTON (hereinafter referred to as "Plaintiff") is and, at all times
 24 mentioned herein, was a resident of the State of Nevada, County of Clark.

25 2. That Defendant SMITH'S FOOD & DRUG CENTERS, INC. a/ka/ Kroger is and, at all
 26 times mentioned herein, was a Foreign (Ohio) Corporation with it's principle place of business in
 27 the State of Utah.

28 COMPLAINT - 1

1 3. That the true names and capacities, whether individual, corporate, associates, co-
2 partnership, or otherwise of Defendants DOES I-V and ROE CORPORATIONS I-V, are unknown
3 to Plaintiff who therefore sues said defendants by such fictitious names. Plaintiff is informed and
4 believes and thereon alleges that each of the defendants designated as DOES I-V and ROE
5 CORPORATIONS I-V is responsible in some manner for the events and happenings referred to in
6 this action and proximately caused damages to Plaintiff as herein alleged. The legal responsibility
7 of said Defendant DOES I-V and ROE CORPORATIONS I-V arises out of, but is not limited to,
8 their status as owners, maintainers, managers, operators, inspectors, controllers, entrustors,
9 constructors and/or installers of the subject premises and/or the area where the alleged incident
10 occurred as described more fully below, and/or their status as owners, maintainers, managers,
11 operators, inspector, controllers, entrustors, constructors, designers, installers, manufacturers,
12 sellers and/or distributors of the subject dangerous condition, and/or their agency, master/servant
13 or joint venture relationship with said defendant and/or the otherwise responsible parties, including
14 any other entities who are also responsible for the events and claims asserted herein, such as parent
15 and subsidiary companies affiliated with the named or otherwise responsible entities. Moreover,
16 on information and belief, Defendant DOES I-V and ROE CORPORATIONS I-V were involved
17 in the initiation, approval, support or execution of the wrongful/negligent acts upon which this
18 litigation is premised, or of similar actions against Plaintiff of which Plaintiff is presently unaware.
19 Plaintiff will ask leave of this Honorable Court to amend this Complaint to insert the true names
20 and capacities of said defendants and, when the same have been ascertained, to join such
21 defendants in this action together with the proper charging allegations.

22 4. At all times relevant herein, Defendants' employees and/or authorized agents contributed
23 to and/or caused the circumstances resulting in the subject incident described below and said
24

1 employees and/or agents were acting within the course and scope of such employment and/or
2 agency at the time, thereby rendering Defendants liable for the negligent acts of said employees
3 and/or agents under the doctrine of vicarious liability/respondeat superior. The true names and
4 capacities of these employees and agents are presently unknown to Plaintiff at this time, who
5 therefore identifies said individuals by the collective fictitious name of "DOE EMPLOYEES.
6 When true names and capacities of these individuals are ascertained, Plaintiff will seek to amend
7 this Complaint as necessary.

8
9 5. That at all times pertinent, Defendants were agents, servants, employees, or joint ventures
10 of every other defendant herein and, at all times mentioned herein, were acting within the scope
11 and course of said agency, employment, or joint venture with knowledge, permission and consent
12 of all other named defendants.

13
14 6. That the facts and circumstances that give rise to the subject lawsuit occurred in Clark
15 County, Nevada on the premises of Smith's Food & Drug Centers Inc., d/b/a M707 Kroger
16 West/Smith's at 3013 W. Craig Road, North Las Vegas, NV 89032 (hereinafter the "Premises"),
17 which, upon information and belief, at all times mention herein, was owned, maintained, managed,
18 operated, constructed, installed, inspected, and/or controlled by Defendants, and/or that
19 Defendants were otherwise responsible for the area within the Premises where the subject incident
20 occurred, and/or that Defendants were otherwise responsible for the subject dangerous condition
21 that is described more fully below, and/or that Defendants are otherwise responsible for the subject
22 incident and/or Plaintiff's resulting damages.

23
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25 **II. GENERAL ALLEGATIONS**

26
27 7. That Smith's Food & Drug Center's Inc. operates a grocery store at 3013 W. Craig Rd.,
28 Las Vegas, NV 89032 (Store # M706), commonly referred to as "Smith's."

1 8. That on or around July 15, 2018, Plaintiff, DAVID WALTON, was an invitee of Smith's
2 Food & Drug Centers Inc. Mr. Walton drove his vehicle to the property located at 3013 W. Craig
3 Rd. and upon arrival at the property Mr. Walton parked his vehicle in the store parking lot and
4 proceeded to enter the Premises through the front door.
5

6 9. Plaintiff DAVID WALTON shopped for grocery items at Smith's Food & Drug Centers
7 Inc., and once Plaintiff had all desired products he proceeded to the self-checkout.

8 10. That an unknown liquid was on the floor in the self-checkout area.

9 11. That the unknown liquid created a Dangerous Condition.

10 12. That the Dangerous Condition was the result of the act of a Smith's employee and/or the
11 Dangerous Condition was on the floor for such a duration of time that a Smith's employee
12 performing their work duties in a reasonable manner should have known, or had actual knowledge
13 of the Dangerous Condition.

14 13. As Plaintiff approached a self-checkout scanner Plaintiff slipped and fell on the unknown
15 liquid on the floor near the self-checkout scanner. The fall caused Plaintiff to forcefully impact
16 the hard laminate tile / concrete floor with this hand, wrist, elbow, shoulder and knee before
17 coming to complete rest on the ground.

18 14. After the fall an employee of Smith's Food & Drug Centers, Inc. who was working the
19 self-checkout area approached Plaintiff and observed the liquid on Plaintiff's shorts and on the
20 floor by the self-checkout scanner.

21 15. Subsequent to the fall, Plaintiff sought medical attention for multiple traumatic injuries,
22 ultimately leading to surgical intervention and extensive post-traumatic accident therapeutic
23 treatments.

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COMPLAINT - 4

FIRST CAUSE OF ACTION
(Premises Liability - Negligence)

16. Plaintiff incorporates paragraphs 1 through 15 as if those paragraphs were fully incorporated herein.

17. That Defendants, as the owners, managers and/or maintainers of the Premises, owed Plaintiff a duty of care to provide a safe environment for Plaintiff, free from dangerous conditions.

18. That Defendants owed Plaintiff a duty of care to adequately maintain and inspect the Premises to ensure that the Premises was free from dangerous conditions.

19. That Defendants owed Plaintiff a duty of care to warn Plaintiff of any non-obvious and dangerous conditions on the Premises.

20. That Defendants knew or reasonably should have known that the subject Dangerous Condition existed on the Premises.

21. That Defendants at all times relevant herein, breached the aforementioned duties of care by, among other things:

- a. Failing to provide Plaintiff with a safe environment, free from hazards that were or should have been recognized by Defendants;
 - b. Failing to properly construct and/or inspect the Dangerous Condition, which ultimately caused Plaintiff's injuries and damages;
 - c. Permitting and allowing the Dangerous Condition to remain for an unreasonable period of time despite having actual and/or constructive notice of said condition;
 - d. Failing to properly warn of the non-obvious and Dangerous Condition; and/or
 - e. Otherwise acting in negligent and careless manner by failing to exercise the degree of care required under the circumstances.

22. As a direct and proximate result of Defendants' actions, Plaintiff has suffered general and special damages in an amount in excess of \$15,000.00.

23. That as a direct and proximate result of Defendants' actions, Plaintiff has been required to engage the services of an attorney, incurring attorney's fees and costs to bring this action.

SECOND CAUSE OF ACTION
(Premises Liability – Gross Negligence)

24. Plaintiff incorporates paragraphs 1 through 23 as if those paragraphs were fully incorporated herein.

25. That Defendants, as the owners, managers and/or maintainers of the Premises, owed Plaintiff a duty of care to provide a safe environment for Plaintiff, free from dangerous conditions.

26. That Defendants owed Plaintiff a duty of care to adequately maintain and inspect the Premises to ensure that the Premises was free from dangerous conditions.

27. That Defendants owed Plaintiff a duty of care to warn Plaintiff of any non-obvious and dangerous conditions on the Premises

28. That Defendants knew or reasonably should have known that the subject Dangerous Condition existed on the Premises.

29. That Defendants at all times relevant herein, breached the aforementioned duties of care by among other things:

- a. Failing to provide Plaintiff with a safe environment, free from hazards that were or should have been recognized by Defendants;
 - b. Failing to properly clean and/or inspect the Dangerous Condition, which ultimately caused Plaintiff's injuries and damages;
 - c. Permitting and allowing the Dangerous Condition to remain for an unreasonable period of time despite having actual and/or constructive notice of said condition;

- d. Failing to properly warn of the non-obvious and Dangerous Condition; and/or
- e. Otherwise acting in a negligent and careless manner by failing to exercise the degree of care required under the circumstances.

30. Defendants engaged in actions or omissions in respect to their legal duty of an aggravated character, and/or with willful, wanton disregard for Plaintiff's safety.

31. As a direct and proximate result of Defendant's breach, Plaintiff suffered devastating injuries.

32. As a direct and proximate result of Defendants' actions, Plaintiff has suffered general and special damages in an amount in excess of \$15,000.00.

33. That as a direct and proximate result of Defendants' actions, Plaintiff has been required to engage the services of an attorney, incurring attorneys' fees and costs to bring this action.

THIRD CAUSE OF ACTION
(Negligent Hiring)

34. Plaintiff incorporates paragraphs 1 through 33 of the Complaint as though said paragraphs were fully set forth herein.

35. Defendants owed Plaintiff several duties including, but not limited to, the following:

- a. The duty to keep Plaintiff safe from the negligent acts of their employees;
- b. The duty to provide and hire responsible employees; and
- c. The duty to conduct reasonable investigation into the backgrounds of employees.

36. Upon information and belief, Defendants breached these duties by, among other things;

- a. Hiring individuals, including DOES EMPLOYEES, who were not qualified and/or competent for their positions;

- b. Failing to conduct a reasonable and thorough investigation into the personal background and employment history of their employees, including DOE EMPLOYEES;
 - c. Failing to implement adequate policies and/or procedures for hiring employees, including DOE EMPLOYEES; and/or
 - d. Failing to adequately train their employees, including DOES EMPLOYEES.

37. As a direct and proximate result of Defendants' actions, Plaintiff has suffered general and special damages in an amount in excess of \$15,000.00.

38. That as a direct and proximate result of Defendants' actions, Plaintiff has been required to engage the services of an attorney, incurring attorney's fees and costs to bring this action.

FOURTH CAUSE OF ACTION
(Negligent Training)

39. Plaintiff incorporates paragraphs 1 through 38 of the Complaint as though said paragraphs were fully set forth herein.

40. Defendants owed Plaintiff the duty to exercise reasonable care in training and supervision of any and all employees. This duty required by Defendants to train and supervise employees, including DOE EMPLOYEES, to ensure that these employees acted without negligence.

41. Defendants breached this duty when they failed to properly train and supervise DOE EMPLOYEES, whose negligence caused injury to Plaintiff as alleged herein. If Defendants had properly trained and supervised DOE EMPLOYEES, this negligence would not have occurred.

42. As a direct and proximate result of Defendant's actions, Plaintiff has suffered general and special damages in an amount in excess of \$15,000.00.

43. That as a direct and proximate result of Defendants actions, Plaintiff has been required to engage the services of an attorney, incurring attorney's fees and costs to bring this action.

FIFTH CAUSE OF ACTION
(Negligent Retention)

44. Plaintiff incorporates paragraphs 1 through 43 of the Complaint as though said paragraphs were fully set forth herein.

45. Defendants owed Plaintiff the duty to exercise reasonable care in the retention of employees.

46. Upon information and belief, Defendants breached this duty by negligently retaining employees, including DOE EMPLOYEES, even though they knew, or should have known, that these employees lacked the qualifications and/or competence for their position.

47. As a direct and proximate result of Defendants' actions, Plaintiff has suffered general and special damages in an amount in excess of \$15,000.00.

48. That as a direct and proximate result of Defendants' actions, Plaintiff has been required to engage the services of an attorney, incurring attorney's fees and costs to bring this action.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff DAVID WALTON, expressly reserving the right to amend this Complaint prior to or at the time of trial of this action to insert those items of damage not yet fully ascertainable, prays for judgment against all Defendants, and each of them as follows:

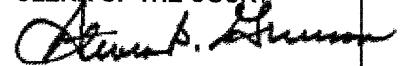
1. For general damages sustained by Plaintiff in an amount in excess of \$15,000.00;
 2. For special damages sustained by Plaintiff in an amount in excess of \$15,000.00;
 3. For reasonable attorney's fees and costs;
 4. For pre and post judgment interest at the statutory rate; and
 5. For such other relief as the Court deems just and proper.

Dated this 15th day of July, 2020.



BRADLEY J. BELLISARIO, ESQ.
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Attorney for Plaintiff
David Walton

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Steven D. Grierson
CLERK OF THE COURT



1 **MDSM**
2 JERRY S. BUSBY
3 Nevada Bar #001107
4 COOPER LEVENSON, P.A.
5 3016 West Charleston Boulevard - #195
6 Las Vegas, Nevada 89102
(702) 366-1125
FAX: (702) 366-1857
jbusby@cooperlevenson.com
Attorneys for Defendant
SMITH'S FOOD & DRUG CENTERS, INC.

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 DAVID WALTON,

10 Plaintiff,

11 vs.

12 SMITH'S FOOD & DRUG CENTERS, INC.
13 A/K/A KROGER AND DOES I-V, AND
14 ROE CORPORATIONS, I-V, INCLUSIVE,

Defendants.

CASE NO.: A-20-818068-C
DEPT. NO.: II

**DEFENDANT SMITH'S FOOD & DRUG
CENTERS, INC.'S MOTION TO DISMISS**

HEARING DATE REQUESTED

15 COMES NOW Defendant, SMITH'S FOOD & DRUG CENTERS, INC. ("SMITH'S"), by
16 and through its attorney of record, JERRY S. BUSBY ESQ., of the law firm COOPER LEVENSON,
17 P.A., and submits this Motion to Dismiss for Plaintiff's failure to timely serve the Summons and
18 Complaint.

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This Motion is further made and based on NRCP 4(e), the pleadings and papers on file herein, the Memorandum of Points and Authorities submitted herewith, and any oral argument that may be had at the time of hearing of this matter.

Dated this 17th day of November, 2020.

COOPER LEVENSON, P.A.

By /s/ Jerry S. Busby

Jerry S. Busby
Nevada Bar No. 001107
3016 West Charleston Boulevard - #195
Las Vegas, Nevada 89102
Attorneys for Defendant
SMITH'S FOOD & DRUG CENTERS, INC.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

OVERVIEW

NRCP 4(e) mandates dismissal of a complaint for failure to timely serve process unless the party who was responsible for service files a motion for enlargement of time to serve process and shows good cause for their delay.

Here, Plaintiff filed his Complaint on July 15, 2020, and more than 124 days later has still not served the Complaint. Plaintiff's failure to effect service of process is a clear and obvious violation of NRCP Rule 4(e). Furthermore, Plaintiff has never filed a Motion to Enlarge Time and cannot show good cause for his failure to timely serve the Complaint. Plaintiff's failure to conduct due diligence of determining the proper parties or even a cursory review of available public records does not excuse his responsibility of complying with applicable procedural standards. Therefore, while Plaintiff's accident and his alleged resulting injuries are unfortunate, his failure to act with reasonable diligence requires dismissal of this case.

Based on the foregoing and the law and argument below, SMITH'S respectfully requests this Court grant its Motion to Dismiss.

111

II.

PROCEDURAL HISTORY

Plaintiff filed his Complaint on October 23, 2019. Plaintiff failed to timely serve SMITH'S with a copy of the Complaint. It has been more than 124 days since Plaintiff filed his Complaint. According to the information available on the Eighth Judicial District Court Portal, Plaintiff requested and this Court issued a Summons July 16, 2020. Four months have passed since the Summons was issued without any attempted service of process.

III.

LEGAL ARGUMENT**1. Plaintiff failed to timely serve process.**

NRCP 4(e) reads:

The summons and complaint must be served upon a defendant no later than 120 days after the complaint is filed, unless the court grants an extension of time under this rule. If service of the summons and complaint is not made upon a defendant before the 120-day service period--or any extension thereof--expires, *the court must dismiss the action*, without prejudice, as to that defendant upon motion or upon the court's own order to show cause. If a plaintiff files a motion for an extension of time before the 120-day service period--or any extension thereof--expires and shows that good cause exists for granting an extension of the service period, the court must extend the service period and set a reasonable date by which service should be made. (Emphasis added.)

More than 124 days have elapsed since the filing of Plaintiff's Complaint. Given the plain meaning of NRCP Rule 4(e), the case "must" be dismissed unless Plaintiff filed a motion to enlarge time to serve the pleading and can show good cause for his delay. Having done neither in this case, dismissal is mandatory.

2. Plaintiff did not seek enlargement of time and cannot show good cause for the untimely service of process.

In 2004, NRCP 4(i) was amended to add a requirement that a party must file a motion seeking enlargement of time to effect service before the expiration of the 120-day time period. *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 245 P.3d 1198, 1200 (2010).

///

1 Here, Plaintiff did not file a motion to enlarge time to serve the Complaint. Further, he
 2 cannot establish good cause for his failure because he has not taken any affirmative steps to serve
 3 SMITH'S and advance his case. Moreover, there is no evidence that SMITH'S evaded service or did
 4 anything to thwart Plaintiff's efforts to effectuate proper service. SMITH'S is a well-known and
 5 established corporation in southern Nevada. Information regarding SMITH'S registered agent is
 6 easily accessible even for laypersons, let alone Plaintiff's attorney. Thus, Plaintiff has not been
 7 diligent in attempting to serve SMITH'S. Since the filing of his Complaint, Plaintiff has had ample
 8 time to serve the same, yet he has done nothing to prosecute his case.

9 IV.

10 CONCLUSION

11 Plaintiff failed to serve process on SMITH'S. Since the filing of his Complaint, 124 days
 12 have passed. Beyond this, Plaintiff did not seek to enlarge time to serve his Complaint and is
 13 foreclosed from establishing good cause for his dilatory actions. More importantly, the two-year
 14 statute of limitations for personal injury actions in Nevada has run.

15 Accordingly, for the reasons state above, SMITH'S Motion to Dismiss Plaintiff's Complaint
 16 should be granted, and this matter should be dismissed in its entirety.

17 Dated this 17th day of November, 2020.

18 COOPER LEVISON, P.A.

20 By /s/ Jerry S. Busby

21 Jerry S. Busby
 22 Nevada Bar No. 001107
 23 3016 West Charleston Boulevard - #195
 24 Las Vegas, Nevada 89102
 25 Attorneys for Defendant
 26 SMITH'S FOOD & DRUG CENTERS, INC.

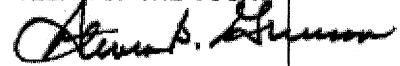
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of COOPER LEVENSON, P.A. and that on this 17th day of November, 2020, I did cause a true copy of the foregoing **DEFENDANT** **SMITH'S FOOD & DRUG CENTERS, INC.'S MOTION TO DISMISS** to be served upon each of the parties listed below via electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve System:

Bradley J. Bellisario, Esq.
7495 West Azure Drive – Suite 258
Las Vegas, NV 89130
Attorney for Plaintiff

By /s/ Theresa H. Rutkowski
An Employee of
COOPER LEVENSOn, P.A.

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CLERK OF THE COURT



DISTRICT COURT
CLARK COUNTY, NEVADA

3 David Walton, Plaintiff(s) Case No.: A-20-818068-C
4 vs.
5 Smith's Food & Drug Centers, Inc., Department 2
Defendant(s)

6
7 **NOTICE OF HEARING**
8

9 Please be advised that the Defendant Smith's Food and Drug Centers Inc's Motion to
Dismiss in the above-entitled matter is set for hearing as follows:

10 **Date:** December 21, 2020
11 **Time:** 9:30 AM
12 **Location:** RJC Courtroom 03B
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

13
14
15 **NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the**
Eighth Judicial District Court Electronic Filing System, the movant requesting a
hearing must serve this notice on the party by traditional means.
16
17

18 STEVEN D. GRIERSON, CEO/Clerk of the Court
19

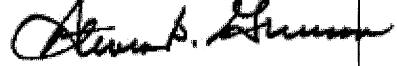
20 By: /s/ Allison Behrhorst
Deputy Clerk of the Court
21

CERTIFICATE OF SERVICE

22 I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion
23 Rules a copy of this Notice of Hearing was electronically served to all registered users on
24 this case in the Eighth Judicial District Court Electronic Filing System.
25

26 By: /s/ Allison Behrhorst
Deputy Clerk of the Court
27
28

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1 CSERV
2 JERRY S. BUSBY
3 Nevada Bar #001107
4 COOPER LEVENSON, P.A.
5 3016 West Charleston Boulevard - #195
6 Las Vegas, Nevada 89102
(702) 366-1125
FAX: (702) 366-1857
jbusby@cooperlevenson.com
Attorneys for Defendant
SMITH'S FOOD & DRUG CENTERS, INC.

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 DAVID WALTON,
10 Plaintiff,
11 vs.
12 SMITH'S FOOD & DRUG CENTERS, INC.
A/K/A KROGER AND DOES I-V, AND
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14 Defendants.

CASE NO.: A-20-818068-C
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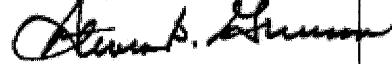
CERTIFICATE OF SERVICE

16 Pursuant to NRCP 5(b), I certify that I am an employee of COOPER LEVENSON, P.A. and
17 that on this 18th day of November, 2020, I did cause a true copy of the foregoing **DEFENDANT**
18 **SMITH'S FOOD & DRUG CENTERS, INC.'S MOTION TO DISMISS** to be placed in the
19 United States Mail, with first class postage prepaid thereon, and addressed as follows:

20 Bradley J. Bellisario, Esq.
21 7495 West Azure Drive – Suite 258
Las Vegas, NV 89130
22 Attorney for Plaintiff

23 By /s/ Theresa H. Rutkowski
An Employee of
COOPER LEVENSON, P.A.

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1 CSERV
2 JERRY S. BUSBY
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(702) 366-1125
FAX: (702) 366-1857
jbusby@cooperlevenson.com
Attorneys for Defendant
SMITH'S FOOD & DRUG CENTERS, INC.

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 DAVID WALTON,
10 Plaintiff,
11 vs.
12 SMITH'S FOOD & DRUG CENTERS, INC.
A/K/A KROGER AND DOES I-V, AND
13 ROE CORPORATIONS, I-V, INCLUSIVE,
14 Defendants.

CASE NO.: A-20-818068-C
DEPT. NO.: II

CERTIFICATE OF SERVICE

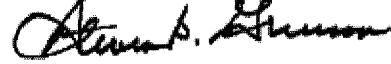
16 Pursuant to NRCP 5(b), I certify that I am an employee of COOPER LEVENSON, P.A. and
17 that on this 18th day of November, 2020, I did cause a true copy of the foregoing **NOTICE OF**
18 **HEARING** to be placed in the United States Mail, with first class postage prepaid thereon, and
19 addressed as follows:

20 Bradley J. Bellisario, Esq.
21 7495 West Azure Drive – Suite 258
Las Vegas, NV 89130
22 Attorney for Plaintiff

23 By /s/ Theresa H. Rutkowski
An Employee of
24 COOPER LEVENSON, P.A.

1 AFFT
 2 Bellisario Law
 3 Bradley Bellisario, Esq.
 4 2945 N Martin L King Blvd
 5 North Las Vegas, NV 89032
 6 State Bar No.: 13452
 7 Attorney(s) for: Plaintiff(s)

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6 DISTRICT COURT
 7 CLARK COUNTY, NEVADA

8
 9
 10 David Walton
 11 vs Plaintiff(s)
 12 Smith's Food & Drug Centers, Inc., A/K/A Kroger; et al Defendant(s)

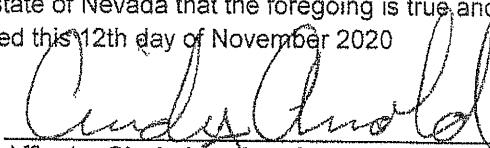
13 Case No.: A-20-818068-C
 14 Dept. No.: 2
 Date:
 Time:

AFFIDAVIT OF SERVICE

15 I, Cindy Lee Arnold, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the
 16 United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and
 17 not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of
 18 the: Summons: Complaint on the 12th day of November, 2020 and served the same on the 12th day of
 19 November, 2020 at 12:25PM by serving the Defendant(s), Smith's Food & Drug Centers, Inc., A/K/A Kroger
 20 by personally delivering and leaving a copy at Corporation Service Company, 112 N. Curry St., Carson City, NV
 21 89703 with Kris Osborne, Administrative Assistant pursuant to NRS 14.020 as a person of suitable age and
 22 discretion at the above address, which address is the address of the registered agent as shown on the current
 23 certificate of designation filed with the Secretary of State.

24 Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

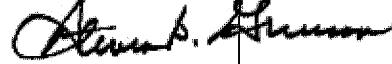
25
 26
 27
 28
 29
 30
 31 I declare under penalty of perjury under the law
 32 of the state of Nevada that the foregoing is true and correct.
 33 Executed this 12th day of November 2020



34
 35 Affiant - Cindy Lee Arnold #: R-2020-12596
 36 Legal Process Service - License # 604



Electronically Filed
12/1/2020 10:59 PM
Steven D. Grierson
CLERK OF THE COURT



1 BRADLEY J. BELLISARIO, ESQ.
2 Nevada Bar No. 13452
3 **BELLISARIO LAW**
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6 T: (702) 936-4784
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Attorney for Plaintiff

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 DAVID WALTON,

10 Plaintiff,

Case No.: A-20-818068-C

Dept No.: 11

11 vs.

12 SMITH'S FOOD & DRUG CENTERS, INC.
13 A/K/A KROGER AND DOES I-V, AND ROE
14 CORPORATIONS, I-V, INCLUSIVE,

OPPOSITION TO DEFENDANT SMITH'S
FOOD & DRUG CENTERS, INC.'S
MOTION TO DISMISS

15 Defendants.

16 COMES NOW Plaintiff, DAVID WALTON, by and through his attorney of record,
17 BRADLEY J. BELLISARIO, Esq. of Bellisario Law, and submits the following OPPOSITION
18 TO DEFENDANT SMITH'S FOOD & DRUG CENTERES, INC.'S MOTION TO DISMISS.

20 STATEMENT OF FACTS

21 This action arises from an incident which occurred on July 15, 2018 in which Plaintiff,
22 David Walton, sustained significant injuries while on Defendant's premises. On July 15, 2020
23 Plaintiff filed a Complaint in Clark County District Court alleging negligence, gross negligence,
24 negligent hiring, negligent training, and negligent retention. On November 12, 2020 Defendant
25 was served a copy of the Complaint and Summons by Cindy Lee Arnold of Legal Process Service

27
28 OPPOSITION TO DEFENDANT SMITH'S FOOD & DRUG CENTERS, INC.'S MOTION TO DISMISS - 1

1 (See Affidavit of Service attached hereto as Exhibit A). On November 17, 2020 Defendant's filed
2 their Motion to Dismiss and served the same on November 18, 2020.

3 LEGAL ARGUMENT
4

5 NRCP 4(e) reads:

6 The summons and complaint must be served upon a defendant no
7 later than 120 days after the complaint is filed, unless the court grants
8 an extension of time under this rule. If service of the summons and
9 complaint is not made upon a defendant before the 120-day service
10 period—or any extension thereof—expires, ***the court must dismiss***
11 ***the action***, without prejudice, as to that defendant upon motion or
12 upon the court's own order to show cause. If a plaintiff files a motion
13 for an extension of time before the 120-day service period—or any
14 extension thereof—expires and shows that good cause exists for
15 granting an extension of the service period, the court must extend the
16 service period and set a reasonable date by which service should be
17 made. (Emphasis Added.)
18

19 Here, Plaintiff served Defendant's registered agent, Corporation Service Company, on
20 November 12, 2020 (See Affidavit of Service attached hereto as Exhibit A). Plaintiff achieved
21 service within the 120-day service window, therefore Plaintiff did not need to file a motion for the
22 extension of time for service. Accordingly, Plaintiff successfully served Plaintiff within the 120-
23 day window and service is timely upon Defendant. Therefore, Defendant's motion to dismiss must
24 be denied.
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CONCLUSION

Defendant timely served the Complaint and Summons on November 12, 2020.

Accordingly, Defendant's Motion to Dismiss must be denied.

Dated this 1st day of December 2020.

/s/ Bradley Bellisario, Esq.

Bradley J. Bellisario, Esq.
BELLISARIO LAW
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Las Vegas, NV 89130
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F: 702.936.4801
E: bradb@bellisariolaw.com

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of BELLISARIO LAW and that on this 1st day of December, 2020, I did cause a true copy of the foregoing OPPOSITION TO DEFENDANT SMITH'S FOOD & DRUG CENTERS, INC.'S MOTION TO DISMISS to be served upon each of the parties listed below via electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve System:

Jerry Busby
COOPER LEVENSON, P.A.
3016 West Charleston Blvd. #195
Las Vegas, NV 89102
Attorneys for Defendant

/s/ Bradley Bellisario
An Employee of Bellisario Law

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16 **EXHIBIT A**
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1 AFFT
 2 Bellisario Law
 3 Bradley Bellisario, Esq.
 4 2945 N Martin L King Blvd
 5 North Las Vegas, NV 89032
 6 State Bar No.: 13452
 7 Attorney(s) for: Plaintiff(s)

8

9

10 DISTRICT COURT
 11 CLARK COUNTY, NEVADA

12

13 David Walton Plaintiff(s)
 14 vs
 15 Smith's Food & Drug Centers, Inc., A/K/A Kroger; et al Defendant(s)

16 Case No.: A-20-818068-C
 17 Dept. No.: 2
 18 Date:
 19 Time:

20

21 AFFIDAVIT OF SERVICE

22 I, Cindy Lee Arnold, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the
 23 United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and
 24 not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of
 25 the: Summons: Complaint on the 12th day of November, 2020 and served the same on the 12th day of
 26 November, 2020 at 12:25PM by serving the Defendant(s), Smith's Food & Drug Centers, Inc., A/K/A Kroger
 27 by personally delivering and leaving a copy at Corporation Service Company, 112 N. Curry St., Carson City, NV
 28 89703 with Kris Oshorne, Administrative Assistant pursuant to NRS 14.020 as a person of suitable age and
 29 discretion at the above address, which address is the address of the registered agent as shown on the current
 30 certificate of designation filed with the Secretary of State.

31 Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

32
 33 I declare under penalty of perjury under the law
 34 of the state of Nevada that the foregoing is true and correct.
 35 Executed this 12th day of November 2020

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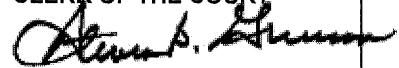
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12/3/2020 9:33 AM
Steven D. Grierson
CLERK OF THE COURT



1 NWM
2 JERRY S. BUSBY
3 Nevada Bar #001107
4 COOPER LEVENSON, P.A.
5 3016 West Charleston Boulevard - #195
6 Las Vegas, Nevada 89102
(702) 366-1125
FAX: (702) 366-1857
jbusby@cooperlevenson.com
Attorneys for Defendant
SMITH'S FOOD & DRUG CENTERS, INC.

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 DAVID WALTON,
10 Plaintiff,

11 vs.

12 SMITH'S FOOD & DRUG CENTERS, INC.
A/K/A KROGER AND DOES I-V, AND
13 ROE CORPORATIONS, I-V, INCLUSIVE,

14 Defendants.

CASE NO.: A-20-818068-C
DEPT. NO.: II

**NOTICE OF WITHDRAWAL OF
MOTION**

15 TO: DAVID WALTON, Plaintiff;

16 TO: BRADLEY J. BELLISARIO, ESQ., Attorney for Plaintiff,

17 PLEASE TAKE NOTICE that Defendant SMITH'S FOOD & DRUG CENTERS, INC. hereby
18 withdraws its **MOTION TO DISMISS** currently noticed to be heard on December 21, 2020, at 9:30
19 a.m.

20 Dated this 3rd day of December, 2020.

21 COOPER LEVENSON, P.A.

23 By /s/ Jerry S. Busby

24 Jerry S. Busby
Nevada Bar No. 001107
3016 West Charleston Boulevard - #195
25 Las Vegas, Nevada 89102
Attorneys for Defendant
26 SMITH'S FOOD & DRUG CENTERS, INC.

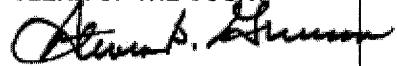
1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of COOPER LEVENSON, P.A. and
3 that on this 3rd day of December, 2020, I did cause a true copy of the foregoing **DEFENDANT**
4 **SMITH'S FOOD & DRUG CENTERS, INC.'S NOTICE OF WITHDRAWAL OF MOTION**
5 to be placed in the United States Mail, with first class postage prepaid thereon, and addressed as
6 follows:

7 Bradley J. Bellisario, Esq.
8 7495 West Azure Drive – Suite 258
9 Las Vegas, NV 89130
10 Attorney for Plaintiff

11 By /s/ Theresa H. Rutkowski
12 An Employee of
13 COOPER LEVENSON, P.A.

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12/4/2020 1:02 PM
Steven D. Grierson
CLERK OF THE COURT



ANS
JERRY S. BUSBY
Nevada Bar #001107
COOPER LEVENSON, P.A.
3016 West Charleston Boulevard - #195
Las Vegas, Nevada 89102
(702) 366-1125
FAX: (702) 366-1857
jbusby@cooperlevenson.com
Attorneys for Defendant
SMITH'S FOOD & DRUG CENTERS, INC.

DISTRICT COURT

CLARK COUNTY, NEVADA

DAVID WALTON,

Plaintiff,

vs.

SMITH'S FOOD & DRUG CENTERS, INC.
A/K/A KROGER AND DOES I-V, AND
ROE CORPORATIONS, I-V, INCLUSIVE,

Defendants.

CASE NO.: A-20-818068-C
DEPT. NO.: II

**DEFENDANT SMITH'S FOOD & DRUG
CENTERS, INC.'S ANSWER TO
PLAINTIFF'S COMPLAINT**

COMES NOW, Defendant, SMITH'S FOOD & DRUG CENTERS, INC., by and through its attorney of record, JERRY S. BUSBY, ESQ., of the law firm COOPER LEVENSON, P.A., and hereby answers Plaintiff's Complaint on file herein as follows:

I.

This answering Defendant states that it does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in Paragraphs 1, 3, 4, 5, 8, 9, 10, 11, 13, 14 and 15 of Plaintiff's Complaint and upon said ground, denies each and every allegation contained therein.

II.

In response to Paragraph 2 of Plaintiff's Complaint, this answering Defendant denies that it is also known as "Kroger". This answering Defendant admits the remaining allegations contained in said Paragraph.

III.

In response to Paragraph 6 of Plaintiff's Complaint, this answering Defendant admits that it

1 owned, maintained, managed, operated and controlled the SMITH'S store located at 3013 W. Craig
2 Road, North Las Vegas, NV 89032. This answering Defendant denies any remaining allegations
3 contained in said Paragraph.

4 **IV.**

5 This answering Defendant admits the allegations contained in Paragraph 7 of Plaintiff's
6 Complaint.

7 **V.**

8 This answering Defendant denies each and every allegation contained in Paragraph 12 of
9 Plaintiff's Complaint".

10 **VI.**

11 This answering Defendant, in response to Paragraph 16 of that portion of Plaintiff's
12 Complaint entitled "**FIRST CAUSE OF ACTION (Premises Liability - Negligence)**" incorporates
13 herein by reference each and every answer previously alleged to the Paragraphs which the Plaintiff
14 has realleged by incorporation.

15 **VII.**

16 Paragraphs 17, 18 and 19 of that portion of Plaintiff's Complaint entitled "**FIRST CAUSE**
17 **OF ACTION (Premises Liability - Negligence)**" state a legal conclusion which is the sole province
18 of the Court to determine. This answering Defendant therefore denies said Paragraphs.

19 **VIII.**

20 This answering Defendant denies each and every allegation contained in Paragraphs 20, 21,
21 22 and 23 of that portion of Plaintiff's Complaint entitled "**FIRST CAUSE OF ACTION**
22 **(Premises Liability - Negligence)**".

23 **IX.**

24 This answering Defendant, in response to Paragraph 24 of that portion of Plaintiff's
25 Complaint entitled "**SECOND CAUSE OF ACTION (Premises Liability – Gross Negligence)**"
26 incorporates herein by reference each and every answer previously alleged to the Paragraphs which
27 the Plaintiff has realleged by incorporation.

28 ///

X.

Paragraphs 25, 26 and 27 of that portion of Plaintiff's Complaint entitled "**SECOND CAUSE OF ACTION (Premises Liability – Gross Negligence)**" state a legal conclusion which is the sole province of the Court to determine. This answering Defendant therefore denies said Paragraphs.

XI.

This answering Defendant denies each and every allegation contained in Paragraphs 28, 29, 30, 31, 32 and 33 of that portion of Plaintiff's Complaint entitled "**SECOND CAUSE OF ACTION (Premises Liability – Gross Negligence)**".

XII.

This answering Defendant, in response to Paragraph 34 of that portion of Plaintiff's Complaint entitled "**THIRD CAUSE OF ACTION (Negligent Hiring)**" incorporates herein by reference each and every answer previously alleged to the Paragraphs which the Plaintiff has realleged by incorporation.

XIII.

Paragraph 35 of that portion of Plaintiff's Complaint entitled "**THIRD CAUSE OF ACTION (Negligent Hiring)**" states a legal conclusion which is the sole province of the Court to determine. This answering Defendant therefore denies said Paragraph.

XIV.

This answering Defendant denies each and every allegation contained in Paragraphs 36, 37 and 38 of that portion of Plaintiff's Complaint entitled "**THIRD CAUSE OF ACTION (Negligent Hiring)**".

XV.

This answering Defendant, in response to Paragraph 39 of that portion of Plaintiff's Complaint entitled "**FOURTH CAUSE OF ACTION** (Negligent Training)" incorporates herein by reference each and every answer previously alleged to the Paragraphs which the Plaintiff has realleged by incorporation.

XVI.

Paragraph 40 of that portion of Plaintiff's Complaint entitled "**FOURTH CAUSE OF ACTION**"

1 (Negligent Training)" states a legal conclusion which is the sole province of the Court to determine.
2 This answering Defendant therefore denies said Paragraph.

3 **XVII.**

4 This answering Defendant denies each and every allegation contained in Paragraphs 41, 42
5 and 43 of that portion of Plaintiff's Complaint entitled "**FOURTH CAUSE OF ACTION**
6 (Negligent Training)".

7 **XVIII.**

8 This answering Defendant, in response to Paragraph 44 of that portion of Plaintiff's
9 Complaint entitled "**FIFTH CAUSE OF ACTION (Negligent Retention)**" incorporates herein by
10 reference each and every answer previously alleged to the Paragraphs which the Plaintiff has
11 realleged by incorporation.

12 **XIX.**

13 Paragraph 45 of that portion of Plaintiff's Complaint entitled "**FIFTH CAUSE OF ACTION**
14 (Negligent Retention)" states a legal conclusion which is the sole province of the Court to determine.
15 This answering Defendant therefore denies said Paragraph.

16 **XX.**

17 This answering Defendant denies each and every allegation contained in Paragraphs 46, 47
18 and 48 of that portion of Plaintiff's Complaint entitled "**FIFTH CAUSE OF ACTION (Negligent**
19 **Retention)**".

20 **AFFIRMATIVE DEFENSES**

21 **FIRST AFFIRMATIVE DEFENSE**

22 Plaintiff did not use reasonable diligence to care for his injuries, thereby aggravating said injuries
23 as a result. Therefore, Plaintiff's claims against this answering Defendant should be denied, or any
24 recovery reduced in proportion to said negligence of Plaintiff.

25 **SECOND AFFIRMATIVE DEFENSE**

26 At the time and place alleged in Plaintiff's Complaint, and for a period of time prior thereto,
27 Plaintiff did not exercise ordinary care, caution, or prudence for the protection of his own safety, and
28 injuries and damages complained of by Plaintiff in the Complaint, if any, were directly and proximately

1 caused or contributed to by the fault, failure to act, carelessness, and negligence of Plaintiff, and
2 therefore Plaintiff's claims against this answering Defendant should be denied, or any recovery reduced
3 in proportion to said negligence of Plaintiff.

4 WHEREFORE, this answering Defendant prays that Plaintiff take nothing by virtue of his
5 Complaint on file herein; for costs and disbursements incurred in this action; and for such other and
6 further relief as to the Court may deem proper.

7 Dated this 4th day of December, 2020.

8 COOPER LEVENSON, P.A.

9
10 By /s/ Jerry S. Busby
11 Jerry S. Busby
12 Nevada Bar No. 001107
13 3016 West Charleston Boulevard - #195
14 Las Vegas, Nevada 89102
15 Attorneys for Defendant
16 SMITH'S FOOD & DRUG CENTERS, INC.
17
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of COOPER LEVENSON, P.A. and that on this 4th day of December, 2020, I did cause a true copy of the foregoing **DEFENDANT**
SMITH'S FOOD & DRUG CENTERS, INC.'S ANSWER TO PLAINTIFF'S COMPLAINT
to be placed in the United States Mail, with first class postage prepaid thereon, and addressed as follows:

Bradley J. Bellisario, Esq.
7495 West Azure Drive – Suite 258
Las Vegas, NV 89130
Attorney for Plaintiff

By /s/ Theresa H. Rutkowski
An Employee of
COOPER LEVENSON, P.A.

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Steven D. Grierson
CLERK OF THE COURT

SUBT
Michael A. Kristof, Esq.
Nevada Bar No. 7780
KRISTOF LAW GROUP
9960 W. Cheyenne Ave, Ste. 170
Las Vegas, NV 89129
Phone: (702) 703-2838
Fax: (702) 846-0818
michael@kristoflawgroup.com
Attorneys for Plaintiff

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DAVID WALTON, individually) Case No.: A-20-818068-C
) Dept.: XIX

Plaintiff.)

145

SMITH'S FOOD & DRUG CENTERS, INC. a/k/a) SUBSTITUTION OF ATTORNEY
KROGER; DOES I - V; and ROE)
CORPORATIONS I-V, inclusive,)

Defendants.

COMES NOW, BRADLEY J. BELLISARIO, ESQ. of BELLISARIO LAW FIRM, attorney of record for Plaintiff DAVID WALTON, does hereby consent to the substitution of MICHAEL A. KRISTOF, ESQ. of KRISTOF LAW GROUP as attorney of record for Plaintiff in the above-captioned matter.

DATED this 31st th day of January, 2021.

BELLISARIO LAW FIRM

/s/ Bradley J. Bellisario

BRADLEY J. BELLISARIO, ESQ.
Nevada Bar No. 13452
2945 N. Martin Luther King Boulevar
N. Las Vegas, NV 89032
Attorney for Plaintiff

MICHAEL A. KRISTOF, ESQ. of KRISTOF LAW GROUP does hereby agree to be substituted in the place of BRADLEY J. BELLISARIO, ESQ., ESQ. of BELLISARIO LAW FIRM as attorney of record for Plaintiff, in the above-captioned matter.

KRISTOF LAW GROUP

MICHAEL A. KRISTOF, ESQ.
Nevada Bar No. 7780
9960 W. Cheyenne Ave., Suite 170
Las Vegas, Nevada 89129

I, DAVID WALTON, do hereby consent to the substitution of MICHAEL A. KRISTOF, ESQ. of KRISTOF LAW GROUP as my attorney of record in the place of BRADLEY J. BELLISARIO, ESQ. of BELLISARIO LAW FIRM in the above-captioned matter.

DATED this 27 day of January, 2021.

DAVID WALTON

CERTIFICATE OF SERVICE

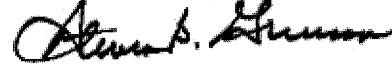
Pursuant to Nevada Rules of Civil Procedure 5 (b), I hereby certify that on the 1stth February day of January, 2021, the **SUBSTITUTION OF ATTORNEYS** was served via electronic service to the following counsel of record:

Jerry Busby, Esq.
COOPER LEVENSON, P.A.
3016 W. Charleston Boulevard, Suite 195
Las Vegas, Nevada 89102
Attorneys for Defendants

/s/ Michael Kristof

An Employee of KRISTOF LAW GROUP

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 Steven D. Grierson
 CLERK OF THE COURT



1 REQT
 2 Michael A. Kristof, Esq.
 3 Nevada Bar No. 7780
KRISTOF LAW GROUP
 4 9960 W. Cheyenne Ave, Ste. 170
 Las Vegas, NV 89129
 Phone: (702) 703-2838
 Fax: (702) 846-0818
 michael@kristoflawgroup.com
 Attorneys for Plaintiff

7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 DAVID WALTON, individually) Case No.: A-20-818068-C
10 Plaintiff,) Dept.: XIX
11 vs.)
12 SMITH'S FOOD & DRUG CENTERS, INC. a/k/a) REQUEST FOR EXEMPTION FROM
13 KROGER; DOES I - V; and ROE) ARBITRATION
14 CORPORATIONS I - V, inclusive,)
15 Defendants.)
16)

17 Plaintiff hereby requests the above-entitled matter be exempted from arbitration pursuant to
 18 Nevada Arbitration Rules 3 and 5, as this case involves an amount in excess of \$50,000, exclusive
 19 of interest and costs.

21 While the filing of Plaintiff's arbitration exempt request is not timely, in accordance with
 22 Nevada Arbitration Rule 5(A), Plaintiff has good cause to support the delayed request. Plaintiff's
 23 counsel only recently took over the handling of this case from Plaintiff's prior counsel who has
 24 temporarily closed his practice for personal reasons. Kristof Law Group is unaware as to why prior
 25 counsel did not file a timely petition other than to say this counsel is aware that prior counsel was
 26 dealing with significant personal issues – these same issues which have caused him to close his
 27

1 practice. Plaintiff's counsel would ask that there not be a fine for the late filing as Plaintiff only
 2 became Kristof Law Group's client on January 21, 2021.

3 **I. SUMMARY OF FACTS**

4 This is a negligence/personal injury matter. On July 15, 2018, Plaintiff was shopping at
 5 Defendant Smith's Food & Drug Centers, Inc. Plaintiff alleges that after he shopped for his items,
 6 he proceeded to the self-checkout area where he slipped and fell on an unknown substance on the
 7 floor.

8 Plaintiff alleges that he sustained severe injuries as a result of Defendant's negligence.
 9 Plaintiff's primary injuries were to his right shoulder and left knee. Plaintiff sought treatment for his
 10 injuries, which included initial conservative chiropractic care. Unfortunately, it was discovered
 11 through MRIs of the right shoulder and left knee that Plaintiff had sustained tears to both areas.
 12 Plaintiff was subsequently referred to Dr. Bernard Ong for orthopedic evaluation. Dr. Ong
 13 recommended for Plaintiff to undergo left knee arthroscopy, which was performed on January 12,
 14 2019, as well as right shoulder arthroscopy, which was performed on November 21, 2019.

15 Plaintiff's current medical expenses are as follows:

16 **Past Medical Expenses**

Injury Solutions	\$122,223.50
Care Now	TBD
Las Vegas Radiology	\$9,900.00
Valley Anesthesiology Consultants	\$4,800.00
Bernard Ong, M.D.	\$16,489.00 ¹
Affinity Surgery Center	\$111,950.00
All Medical	\$ 3,074.00
TOTAL:	\$268,436.50

25 ///

26 28 ¹ This is not a final total. Plaintiff's counsel is in the process of obtaining a current billing ledger.

1 I hereby certify pursuant to N.R.C.P. 11 this case to be within the exemption referenced
2 above and am aware of the sanctions which may be imposed against any attorney or party who
3 without good cause or justification attempts to remove a case from the arbitration program.
4

5 I further certify pursuant to NRS Chapter 239B and NRS 603A.040 that this document and
6 any attachments thereto do not contain personal information including, without limitation, home
7 address/phone number, social security number, driver's license number or identification card
8 number, account number, PIN numbers, credit card number or debit card number, in combination
9 with any required security code, access code or password that would permit access to the person's
10 financial account.
11

12 DATED this 8th day of February, 2021.

13 KRISTOF LAW GROUP
14
15 /s/ *Michael A. Kristof*
16 MICHAEL A. KRISTOF, ESQ.
17 Nevada Bar No. 7780
9960 W. Cheyenne Ave., Suite 170
Las Vegas, Nevada 89129
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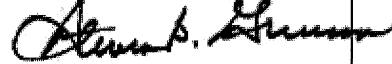
CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5 (b), I hereby certify that on the 8th day of February, 2021, the **REQUEST FOR EXEMPTION FROM ARBITRATION** was served via electronic service to the following counsel of record:

Jerry Busby, Esq.
COOPER LEVENSON, P.A.
3016 W. Charleston Boulevard, Suite 195
Las Vegas, Nevada 89102
Attorneys for Defendants

/s/ Michael A. Kristof

An Employee of KRISTOF LAW GROUP

1 Electronically Filed
2 2/25/2021 5:06 PM
3 Steven D. Grierson
4 CLERK OF THE COURT


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3 CDRG

4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6 David Walton, Plaintiff(s)

7 vs.

8 Smith's Food & Drug Centers, Inc.,

9 Defendant(s)

10 CASE NO: A-20-818068-C
11 DEPT. NO: XIX

12 **COMMISSIONER'S DECISION ON REQUEST FOR EXEMPTION**

13 REQUEST FOR EXEMPTION FILED ON: February 08, 2021

14 EXEMPTION FILED BY: Plaintiff OPPOSITION: No

15 **DECISION**

16 Having reviewed the Request for Exemption, and all related pleadings, the Request
17 for Exemption is hereby GRANTED.

18 DATED this 25th of February, 2021.
19
20

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25 
26 ADR COMMISSIONER
27

1

2

NOTICE

3

Pursuant to Nevada Arbitration Rule 5(D), you are hereby notified you have five (5) days from the date you are served with this document within which to file written objections with the Clerk of Court and serve all parties. The Commissioner's Decision is deemed served three (3) days after the Commissioner's designee deposits a copy of the Decision in the U.S. Mail. **Pursuant to NEFCR Rule 9(f)(2) an additional 3 days is not added to the time if served electronically (via e-service).**

7

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9

A copy of the foregoing Commissioner's Decision on Request for Exemption was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program on the date of e-filing.

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If indicated below, a copy of the foregoing Commissioner's Decision on Request for Exemption was also:

Placed in the folder of counsel maintained in the Office of the Clerk of Court on _____, 2021.

Mailed by United States Postal Service, Postage prepaid, to the proper parties listed below at their last known address(es) on _____, 2021.

/s/ Loretta Walker

ADR COMMISSIONER'S DESIGNEE